



Employment considerations within public libraries

WV Library Association
“Spring Fling”
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Topics

- ❖ Employees vs. contractors
- ❖ Wage and hour laws
- ❖ Leave issues



Employee v. contractor

❖ *Why does it matter?*

- ♦ Most of the laws we will discuss apply to employees, not independent contractors
- ♦ Misclassifying an employee as an independent contractor can cost an employer dearly (tax liability; overtime liability; benefits liability)



Employee v. contractor

Behavioral control

- ♦ Instructions? Does the employer tell the worker when and where to work? What tools/equipment to use?
- ♦ Training? Is the worker told “how” to do his/or her job?

Financial control

- ♦ Expenses? Who pays?
- ♦ Moonlighting? Does worker work elsewhere?
- ♦ Payment? How frequent?
- ♦ Risk? Can worker make profit/loss?

Relationship

- ♦ Written contract?
- ♦ Benefits?
- ♦ Permanent?
- ♦ Key aspect of regular business?



Employee v. contractor

- ❖ Librarians are employees.
- ❖ The person who replaces your library roof is an independent contractor.
- ❖ What about a “back-up librarian”?
- ❖ What about a janitor? A cleaning service?

Fair Labor Standards Act

- ❖ Coverage
- ❖ Hours worked
- ❖ Minimum wage
- ❖ Overtime pay
- ❖ Recordkeeping



FLSA coverage

- ❖ Employment: There must be an “employment” relationship
- ❖ Enterprise: At least 2 employees + \$500K in business OR a federal, state, or local agency (WV Code § 10-1-1 - Public libraries are creatures of statute)



Hours worked

- ❖ Suffered/permitted time: Work not requested but suffered or permitted is work time
- ❖ On-call time: Only work time if employee must stay on premises or so close to premises that employee cannot use that time effectively for his/her own purposes
- ❖ Meals/rest: Meal periods are not hours worked; brief rest periods (5 to 20 minutes) are
- ❖ Training: Authorized attendance “Spring Fling” is work time
- ❖ Travel: To and from work = no; away from home = special rules. USDOL: “As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.”



Minimum wage

The Law

- ❖ Federal: \$7.25 per hour
- ❖ WV: \$8.75 per hour in 2016 (\$8.00 per hour in 2015)



Best Practice: If at all possible, pay your full-time library employees a “living wage.”

Overtime pay

The Rule

- ❖ Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek

Issues

- ❖ Non-exempt?
- ❖ Regular pay?
- ❖ Workweek?



“White collar”/541 exemptions

- ❖ Certain executive employees
- ❖ Certain administrative employees
- ❖ Certain professional employees
- ❖ Certain computer employees

Salary level

+

Salary basis

+

Job duties

Minimum salary level

- ❖ Current rule: \$455 per week; \$23,660 per year
- ❖ Proposed rule: 40th percentile of weekly earnings for full-time salaried workers (\$970 per week & \$50,440 per year in 2016); final rule likely to be issued in July 2016 and go into effect in 2017 and have automatic escalation provision
- ❖ Result if proposed rule is implemented: Many employees, including librarians, previously designated as FLSA-exempt would become non-exempt (hourly)

Salary basis

- ❖ Applies to employee who regularly receives free and clear a predetermined amount of compensation each pay period
- ❖ If the employee is ready, willing, and able to work, deductions cannot be made for time when work was not available. Otherwise, there's likely to be an exception that allows for a deduction (e.g., full days of sick leave, disability leave, FMLA leave).



Executive duties

- ❖ Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- ❖ Customarily and regularly directs the work of two or more other employees
- ❖ Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight



Administrative duties

- ❖ Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- ❖ Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Management/general business operations

- ♦ Tax
- ♦ Finance
- ♦ Accounting
- ♦ Budgeting
- ♦ Auditing
- ♦ Insurance
- ♦ Quality control
- ♦ Purchasing
- ♦ Procurement
- ♦ Advertising
- ♦ Marketing
- ♦ Research
- ♦ Safety and health
- ♦ Human resources
- ♦ Employee benefits
- ♦ Labor relations
- ♦ Public and government relations
- ♦ Legal and regulatory compliance
- ♦ Computer network, internet, and database administration

Professional duties

- ❖ Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- ❖ Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Computer-related occupations

Primary duty is:

- ❖ The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- ❖ The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- ❖ The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- ❖ A combination of the above requiring the same level of skills

Overtime pay considerations

- ❖ Workweek: 7 consecutive 24 hour periods; you get to pick the start date
- ❖ 40 hour trigger: If someone has has a 37.5 hour workweek, and someone works 38.5 hours, that additional hour does not have to be paid at a time-and-a-half rate

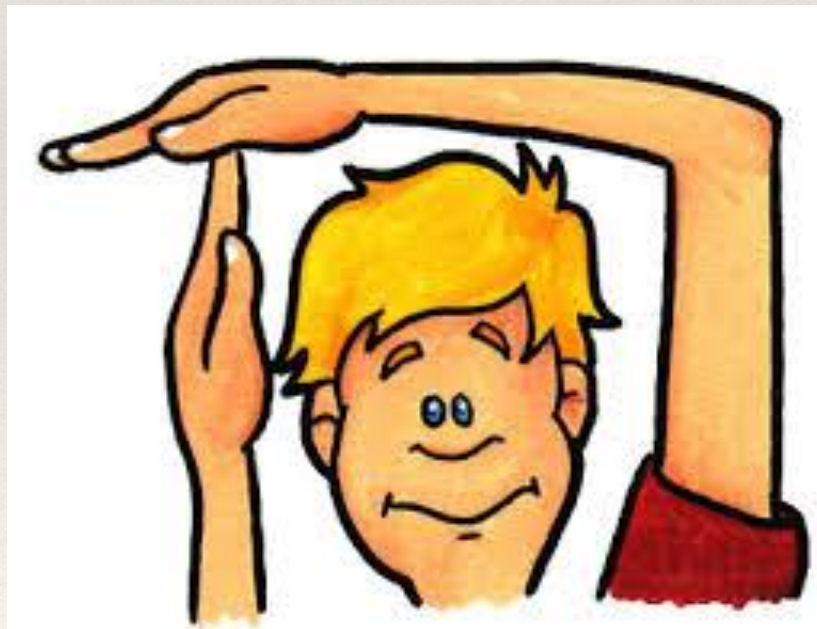
WV Wage Payment and Collection Act

- ❖ Pay frequency: At least twice a month; no more than 19 days between paydays; within five (5) days from end of established pay period. (Note: If pay period ends on Saturday, 5 days is the following Thursday, not Friday.)
- ❖ Pay stub: Must provide itemized statement of deductions
- ❖ Notice of pay/benefit changes: One full pay period's written notice
- ❖ Pay after employment separation: On or before the next regular payday (and include unused leave pay as applicable)



Breaks

- ❖ W.Va. Code § 21-3-10a: “During the course of a workday of six or more hours, all employers shall make available for each of their employees, at least twenty minutes for meal breaks, at times reasonably designated by the employer.”



Family and Medical Leave Act

- ❖ Employer coverage: (1) private sector employers with 50 or more employees; (2) public agencies; (3) public and private K-12 schools
- ❖ Employee eligibility: (1) Worked at least 12 months; (2) At least 1,250 hours of service during 12 months before leave begins; (3) Employed at a work site with 50 employees within 75 miles
- ❖ Benefit: Up to 12 weeks of unpaid job-protected leave each year for serious health condition (self, parent, spouse, child), childbirth/adoption/foster care with maintenance of group health insurance

Compliance: Records

- ❖ Time/attendance records: Keep an accurate record of hours worked each day and total hours worked each week
- ❖ Pay records: Keep an accurate record of hours worked; regular hourly pay; overtime pay; deductions/additions from pay; total pay; pay period dates; and date of payment
- ❖ Leave records: Keep an accurate record of leave acquired and used
- ❖ FLSA-exemptions: Have an accurate position description that makes it evident why a position is exempt

Compliance: Notice

- ❖ Wage and hour poster: Is it displayed prominently?
- ❖ Policies/procedures: Tracking time worked and leave; workweek start; pay period; payday; vacation pay; sick benefits; other fringe benefits; any other leave policies, etc.



Compliance: Why?



- ❖ You may be investigated/audited by USDOL's Wage and Hour Division or the WV Division of Labor's Wage & Hour Division
- ❖ You may face large penalties for non-compliance

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